

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

SARAH HORTON,

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, INC.,  
and TSI FENWAY, INC. d/b/a BOSTON  
SPORTS CLUBS,

Defendants.

Civil Action No. 04-CV-12359-MEL

DEFENDANT TSI FENWAY, INC.'S MOTION TO DISMISS COUNTS I AND III  
OR, IN THE ALTERNATIVE, MOTION FOR A MORE  
DEFINITE STATEMENT OF COUNT III

Defendant TSI Fenway, Inc. ("TSI Fenway" or "the Company") hereby respectfully requests that the Court dismiss Counts I and III of Plaintiff Sarah Horton's ("Horton") Complaint.

In her Complaint, Horton brings claims for breach of an implied contract (Count I) and breach of the implied covenant of good faith and fair dealing (Count III). First, Horton's claim for breach of an implied contract is based on an employee handbook. The handbook on its face states that it is not a contract and that her employment was at-will. Thus, Horton will be unable to show that the handbook was a contract. In any event, even if the handbook did create a contract, Horton has failed to sufficiently allege that the Company breached any duty therein. Therefore, Horton's claim for breach of an implied contract should be dismissed.

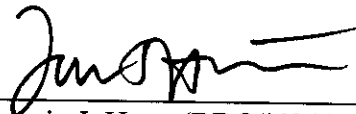
Second, Horton's claim for breach of the implied covenant of good faith and fair dealing is based on vague allegations that seem to suggest that she will be deprived of commissions in the future. There are no allegations that she has not been paid commissions owed or accrued. Because she fails to state a claim for which relief may be granted, Count III of her Complaint should be dismissed. Alternatively, Horton should be ordered to provide a more definite statement of Count III.

WHEREFORE, Defendant TSI Fenway, Inc. hereby respectfully requests that the Court grant its motion and dismiss Counts I and III of Plaintiff Sarah Horton's Complaint with prejudice or, in the alternative, with respect to Count III, order that Plaintiff Sarah Horton provide a more definite statement of Count III without prejudice to Defendant TSI Fenway, Inc. bringing another motion to dismiss if the restated count does not state a claim for which relief may be granted.

Respectfully submitted,

TSI FENWAY, INC. D/B/A  
BOSTON SPORTS CLUBS

By its attorneys,



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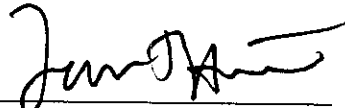
and

Brian S. Cousin, admitted  
*pro hac vice*  
Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Tel: (212) 801-9354  
Fax: (212) 805-9354

DATED: November 29, 2004

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

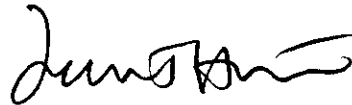
I, Laurie J. Hurtt, hereby certify that on November 10<sup>th</sup> and 26<sup>th</sup>, 2004, I conferred with counsel for Plaintiff Sarah Horton, Jonathan R. Black, Esq., by telephone in a good faith attempt to resolve of narrow the issues presented in this motion.



Laurie J. Hurtt

CERTIFICATE OF SERVICE

I, Laurie J. Hurtt, hereby certify that on the 29<sup>th</sup> day of November, 2004, I served by facsimile and first class mail, postage pre-paid, a copy of the above to the following counsel of record: Jonathan R. Black, Esq., 99 Derby Street, Suite 200, Hingham, MA 02043.



Laurie J. Hurtt

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